

Introduced by Senator PoochigianFebruary 23, 2006

An act to amend Section 1170 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1564, as introduced, Poochigian. Determinate sentencing.

Existing law provides for the determinate sentencing of criminal offenders, as specified.

This bill would make technical, nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1170 of the Penal Code is amended to
2 read:
3 1170. (a) (1) The Legislature finds and declares that the
4 purpose of imprisonment for crime is punishment. This purpose
5 is best served by terms proportionate to the seriousness of the
6 offense with provision for uniformity in the sentences of
7 offenders committing the same offense under similar
8 circumstances. The Legislature further finds and declares that the
9 elimination of disparity and the provision of uniformity of
10 sentences can best be achieved by determinate sentences fixed by
11 statute in proportion to the seriousness of the offense as
12 determined by the Legislature to be imposed by the court with
13 specified discretion.
14 (2) Notwithstanding paragraph (1), the Legislature further
15 finds and declares that programs should be available for inmates,

1 including, but not limited to, educational programs, that are
2 designed to prepare nonviolent felony offenders for successful
3 reentry into the community. The Legislature encourages the
4 development of policies and programs designed to educate and
5 rehabilitate nonviolent felony offenders. In implementing this
6 section, the Department of Corrections *and Rehabilitation* is
7 encouraged to give priority enrollment in programs to promote
8 successful return to the community to an inmate with a short
9 remaining term of commitment and a release date that would
10 allow him or her adequate time to complete the program.

11 (3) In any case in which the punishment prescribed by statute
12 for a person convicted of a public offense is a term of
13 imprisonment in the state prison of any specification of three
14 time periods, the court shall sentence the defendant to one of the
15 terms of imprisonment specified, unless the convicted person is
16 given any other disposition provided by law, including a fine,
17 jail, probation, or the suspension of imposition or execution of
18 sentence or is sentenced pursuant to subdivision (b) of Section
19 1168 because he or she had committed his or her crime prior to
20 July 1, 1977. In sentencing the convicted person, the court shall
21 apply the sentencing rules of the Judicial Council. The court,
22 unless it determines that there are circumstances in mitigation of
23 the punishment prescribed, shall also impose any other term that
24 it is required by law to impose as an additional term. Nothing in
25 this article shall affect any provision of law that imposes the
26 death penalty, that authorizes or restricts the granting of
27 probation or suspending the execution or imposition of sentence,
28 or expressly provides for imprisonment in the state prison for
29 life. In any case in which the amount of preimprisonment credit
30 under Section 2900.5 or any other provision of law is equal to or
31 exceeds any sentence imposed pursuant to this chapter, the entire
32 sentence shall be deemed to have been served and the defendant
33 shall not be actually delivered to the custody of the Director of
34 *the Department of Corrections and Rehabilitation*. The court
35 shall advise the defendant that he or she shall serve a period of
36 parole and order the defendant to report to the parole office
37 closest to the defendant's last legal residence, unless the
38 in-custody credits equal the total sentence, including both
39 confinement time and the period of parole. The sentence shall be
40 deemed a separate prior prison term under Section 667.5, and a

1 copy of the judgment and other necessary documentation shall be
2 forwarded to the Director of *the Department of Corrections and*
3 *Rehabilitation*.

4 (b) When a judgment of imprisonment is to be imposed and
5 the statute specifies three possible terms, the court shall order
6 imposition of the middle term, unless there are circumstances in
7 aggravation or mitigation of the crime. At least four days prior to
8 the time set for imposition of judgment, either party or the
9 victim, or the family of the victim if the victim is deceased, may
10 submit a statement in aggravation or mitigation to dispute facts in
11 the record or the probation officer's report, or to present
12 additional facts. In determining whether there are circumstances
13 that justify imposition of the upper or lower term, the court may
14 consider the record in the case, the probation officer's report,
15 other reports including reports received pursuant to Section
16 1203.03 and statements in aggravation or mitigation submitted by
17 the prosecution, the defendant, or the victim, or the family of the
18 victim if the victim is deceased, and any further evidence
19 introduced at the sentencing hearing. The court shall set forth on
20 the record the facts and reasons for imposing the upper or lower
21 term. The court may not impose an upper term by using the fact
22 of any enhancement upon which sentence is imposed under any
23 provision of law. A term of imprisonment shall not be specified
24 if imposition of sentence is suspended.

25 (c) The court shall state the reasons for its sentence choice on
26 the record at the time of sentencing. The court shall also inform
27 the defendant that as part of the sentence after expiration of the
28 term he or she may be on parole for a period as provided in
29 Section 3000.

30 (d) When a defendant subject to this section or subdivision (b)
31 of Section 1168 has been sentenced to be imprisoned in the state
32 prison and has been committed to the custody of the Director of
33 *the Department of Corrections and Rehabilitation*, the court may,
34 within 120 days of the date of commitment on its own motion, or
35 at any time upon the recommendation of the ~~Director of~~
36 ~~Corrections~~ *director* or the Board of Prison Terms, recall the
37 sentence and commitment previously ordered and resentence the
38 defendant in the same manner as if he or she had not previously
39 been sentenced, provided the new sentence, if any, is no greater
40 than the initial sentence. The resentence under this subdivision

1 shall apply the sentencing rules of the Judicial Council so as to
2 eliminate disparity of sentences and to promote uniformity of
3 sentencing. Credit shall be given for time served.

4 (e) (1) Notwithstanding any other law and consistent with
5 paragraph (1) of subdivision (a) of Section 1170, if the Director
6 of *the Department of Corrections and Rehabilitation* or the Board
7 of Prison Terms or both determine that a prisoner satisfies the
8 criteria set forth in paragraph (2), the director or the board may
9 recommend to the court that the prisoner's sentence be recalled.

10 (2) The court shall have the discretion to resentence or recall if
11 the court finds both of the following:

12 (A) The prisoner is terminally ill with an incurable condition
13 caused by an illness or disease that would produce death within
14 six months, as determined by a physician employed by the
15 department.

16 (B) The conditions under which the prisoner would be
17 released or receive treatment do not pose a threat to public safety.

18 The Board of Prison Terms shall make findings pursuant to this
19 subdivision before making a recommendation for resentence or
20 recall to the court. This subdivision does not apply to a prisoner
21 sentenced to death or a term of life without the possibility of
22 parole.

23 (3) Within 10 days of receipt of a positive recommendation by
24 the director or the board, the court shall hold a hearing to
25 consider whether the prisoner's sentence should be recalled.

26 (4) The prisoner or his or her family member or designee may
27 request consideration for recall and resentencing by contacting
28 the chief medical officer at the prison or the Director of *the*
29 *Department of Corrections and Rehabilitation*. Upon receipt of
30 the request, if the director determines that the prisoner satisfies
31 the criteria set forth in paragraph (2), the director or board may
32 recommend to the court that the prisoner's sentence be recalled.
33 The director shall submit a recommendation for release within 30
34 days in the case of inmates sentenced to determinate terms and,
35 in the case of inmates sentenced to indeterminate terms, the
36 director may make a recommendation to the Board of Prison
37 Terms with respect to the inmates who have applied under this
38 section. The board shall consider this information and make an
39 independent judgment pursuant to paragraph (2) and make
40 findings related thereto before rejecting the request or making a

1 recommendation to the court. This action shall be taken at the
2 next lawfully noticed board meeting.

3 (5) Any recommendation for recall submitted to the court by
4 the Director of *the Department of Corrections and Rehabilitation*
5 or the Board of Prison Terms shall include one or more medical
6 evaluations, a postrelease plan, and findings pursuant to
7 paragraph (2).

8 (6) If possible, the matter shall be heard before the same judge
9 of the court who sentenced the prisoner.

10 (f) Any sentence imposed under this article shall be subject to
11 the provisions of Sections 3000 and 3057 and any other
12 applicable provisions of law.

13 (g) A sentence to state prison for a determinate term for which
14 only one term is specified, is a sentence to state prison under this
15 section.